

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

In the Matter of the PERA Salary  
Determinations Affecting Retired and  
Active Employees of the City of Duluth,  
  
Allen Johnson, et al., Petitioners

**ORDER**

This matter came before Administrative Law Judge Bruce H. Johnson on the Petitioners' Motion to Join the City of Duluth as a Party. Petitioners filed the motion on September 30, 2009, and the Public Employees Retirement Association (PERA) responded on September 30, 2009. The record on the motion closed on that date.

Elizabeth A. Storaasli, Dryer Storaasli Knutson & Pommerville, Ltd., appeared on behalf of the Petitioners. Jon K. Murphy, Assistant Attorney General, appeared on behalf of PERA.

Based upon all of the files, records, and proceedings herein, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

**ORDER**

IT IS ORDERED that the Petitioners' Motion to Add the City of Duluth as a Party is **DENIED**.

Dated: 10/14/09

s/Bruce H. Johnson  
BRUCE H. JOHNSON  
Administrative Law Judge

## MEMORANDUM

Petitioners are retired firefighters from the City of Duluth (City). This matter is before the ALJ to determine whether certain amounts paid by the City to, or on behalf of, Petitioners constitute “salary” for PERA purposes. In September 2008, the City advised PERA that it had erroneously treated certain amounts paid to, or on behalf of, Petitioners since 1996, as “salary” for PERA reporting purposes and erroneously made employer/employee contributions to PERA based upon those amounts. PERA confirmed that certain amounts had been erroneously reported as “salary.” As a result it believes that: 1) employees are eligible for a refund of employee contributions made on the invalid salary amounts; 2) the City is eligible for a refund of employer contributions made on the invalid salary amounts; 3) the benefits paid to retired employees must be reduced; and 4) it must recover the amount of overpaid benefits from retirees.<sup>1</sup>

Petitioners argue that the City should be joined as a party to this proceeding under Minn. R. Civ. P. 19, which allows joinder of persons needed for the just adjudication of a matter. Petitioners allege that the City is a necessary party because they received compensation pursuant to collective bargaining agreements between the City and their unions. They allege that the relief requested by the agency cannot be granted without retroactively affecting the contractual compensation which had been promised to Petitioners by the City. If the relief is granted, Petitioners argue they will have experienced a breach of their benefit of the contract between the City and its unions. They argue that if their benefits are reduced, they should have a remedy against the City because they would have obtained substitute compensation pursuant to their collective bargaining agreements. They argue that their defenses, including reliance, statute of limitations, and estoppel, all relate to actions or inactions by the City and require access to information and data in the possession of the City. They argue that there is a risk of inconsistent results if Petitioners compensation is reduced in this proceeding and they have to initiate a new proceeding in district court to recover that compensation. Finally, they allege the failure to join the City will result in discovery hardship because of the number of necessary subpoenas.

The ALJ has determined that the City need not be a party for the ALJ to decide whether to grant the relief requested. Nor does the ALJ have jurisdiction to order the City to participate as a party in this matter. The issues raised by Petitioners regarding their contractual relationships with the City are beyond the scope of this proceeding. The purpose of this proceeding is to review PERA’s determinations regarding the legal status of certain items of compensation, i.e., whether certain compensation constitutes “salary” under the PERA definition. Though certain of Petitioners defenses pertain to the action or inaction of the City, neither the PERA Board nor the ALJ has authority to make findings of fact against the City, or to order the City to pay compensation to Petitioners. Petitioners must seek redress in a different forum for any claim they may have against the City. Although the City has records that may be relevant to this proceeding, in particular the records and salaries that it reported to PERA, that

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<sup>1</sup> See Notice of Hearing.

information is available to the parties via subpoena. The City need not be a party to this proceeding and the Petitioners' motion is denied.

**B.H.J.**